



C.M.A.No.1716 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1716 of 2023

1.Devi
2.E. Jeevitha (Minor)
3.E. Sharmila (Minor)
4.E. Susuin Kumar (Minor) ... Appellants
[Appellants 2 to 4 are minors rep., by mother and natural guardian]

Vs

1.R.K.V. Cargo Movers Pvt. Ltd.,
No.465, Main Road, A.G. Complex,
Kovilpatti, Tuticorin District, Pin – 628501.

2.The Oriental Insurance Company Limited,
Oriental House, 2nd Floor,
Old No.115, New No.216, Prakasam Salai,
Broadway, Chennai – 600 108. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.04.2022 in M.A.C.T.O.P.No.365 of 2019 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellants : Ms. A. Subadra
For Respondents : Mr.D. Bhaskaran, for R2
R1 – Ex parte



WEB COPY



C.M.A.No.1716 of 2023

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 01.04.2022 made in M.C.O.P. No.365 of 2019 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. The appellants filed M.C.O.P. No.365 of 2019 on the file of the the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai claiming a sum of Rs.45,00,000/- as compensation for the death of one Elumalai, who died in the accident that took place on 26.12.2018.

3. According to the appellants, on the date of accident, i.e. 26.12.2018 while the deceased Elumalai was standing at Madhava Perumal Paint company, Sirunallur Village, Kancheepuram District, the lorry bearing Registration No.TN-96-8808, driven by its driver without any indication, suddenly took the lorry in reverse and hit the deceased Elumalai and caused the accident, due to which, the deceased died on the spot. Hence, the appellants filed claim petition claiming compensation against the



C.M.A.No.1716 of 2023

respondents.

WEB COPY

4. The first respondent remained ex-parte before the Tribunal.

5. The second respondent filed a counter statement denying all the averments made by the appellants in the claim petition. According to the second respondent, the accident occurred due to the reckless act of the deceased Elumalai; and that total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6. The 1st appellant examined herself as PW1 and one Elumalai, eye-witness to the accident as PW2 and marked Ex.P.1 to Ex.P.9. The second respondent did not examine any witness or mark any document.

7. The Tribunal, considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to the rash and negligent driving by the driver of the first respondent; and directed the second respondent to pay a sum of Rs.25,86,400/- as compensation to the appellants.



C.M.A.No.1716 of 2023

WEB COPY

8. Aggrieved by the said judgment, the appellants have preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellants submitted that the Tribunal had taken a meagre sum as notional income. The deceased was survived by his wife and three minor children. Considering the age and avocation, the Tribunal ought to have fixed a higher notional income. The Tribunal also erred in not awarding compensation under the head loss of love and affection to appellants 2 to 4, who are the minor children of the deceased. Hence, the learned counsel prayed for enhancement.

10. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants prayed for dispensing with notice to him. Hence, notice to the first respondent dispensed with.

11. The learned counsel for the second respondent per contra submitted that the Tribunal after considering the Division Bench Judgment of this Court, applied the formula mentioned therein and fixed the correct



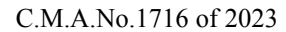
C.M.A.No.1716 of 2023

notional income and hence, no interference is called for and prayed for dismissal of the appeal.

12. The only question involved in the instant appeal is-

Whether the compensation awarded by the Tribunal is just and reasonable?

13. From the materials of record, this Court finds that PW.1, the wife of the deceased was examined to show that the deceased was working as a Loadman in a Paint company. Though PW.1 would state in her evidence that the deceased was earning Rs.18,000/- per month, no income proof was produced. However, considering the avocation, the number of dependants, the age of the deceased, the year of the accident and the fact that the income of labourers had also increased substantially during the relevant time, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.16,000/-. The appellants are entitled to 40% toward future prospects. The multiplier applicable is '15'. Hence, the compensation under the head loss of dependency has to be $16,000 + 6,400(16,000 \times 40\%) \times 12 \times 15 \times 3/4 = \text{Rs.}30,24,000/-$. Further, the



Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	25,10,865/-	30,24,000/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Loss of love and affection	44,000/-	1,20,000/- (40,000x3) for the appellants 2 to 4	Enhanced
4.	Funeral expenses	16,500/-	16,500	Confirmed
	Total	25,86,365/- rounded off: -Rs.25,86,400/-	31,75,500/-	Enhanced by Rs.5,89,100/-

6/8



C.M.A.No.1716 of 2023

petition till the date of deposit. The second respondent / Insurance

Company is directed to deposit the award amount, now determined by this

Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the first appellant is permitted to withdraw her share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. The share of the minors, appellants 2 to 4 is directed to be deposited in any one of the Nationalised Bank till the minor appellants 2 to 4 attains majority. However, the 1st appellant, mother of the minor appellants 2 to 4 is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

22.08.2023

Index: Yes/No

Neutral Citation: Yes/No

AT



WEB COPY



C.M.A.No.1716 of 2023

SUNDER MOHAN, J.

AT

To

1.The Motor Accident Claims Tribunal,
II Judge, Court of Small Causes, Chennai.

2. The Section Officer,
VR Section,
High Court, Madras.

C.M.A.No.1716 of 2023

22.08.2023